

Prosecution Rests In Court-Martial Of Capt. Prout

Nine-Man Court to Convene Monday to Consider
Defense Motion to Dismiss Charge of Giving
Gov't Ammunition to Christian Front

DW 11/27/40 By John Meldon

Defense counsel for Capt. John T. Prout, Jr., being court-martialed before a nine-man court of the New York National Guard, early Saturday morning moved for a dismissal of charges that the defendant gave 1,800 rounds of Guard ammunition to William Gerald Bishop, Christian Front terrorist leader.

The dismissal motion, made by Capt. Prout's civilian counsel, Parnell J. T. Callahan, came a few moments after the prosecution, headed by trial judge advocate Alfred J. Mungo, a National Guard lieutenant, had rested the prosecution's case against Capt. Prout.

Meanwhile, a highlight of the trial session occurred when the prosecution called to the witness stand two sergeants of Capt. Prout's regiment, the 165th Infantry. The two lower ranking officers, William A. Hill and Theodore R. Naimoli, both refused to testify although both were told by Col. H. Russell Drowne, president of the nine-man court, that they had been granted immunity by the State Adjutant General.

REFUSES TO ANSWER

First on the stand was Sergeant Hill, who balked at the only question asked by the trial judge advocate. The latter asked:

"Do you know a man named William Gerald Bishop?"

When Hill refused to answer, he was warned by the court president that he faced serious court-martial charges for contempt. The defense entered an objection and argued that immunity granted by state military authorities would not prevent civil authorities from prosecuting the witness if he revealed he had taken part in the act for which Capt. Prout was accused.

The law member of the nine-man court, Capt. George C. Comstock, thereupon ruled against the defense and ordered the witness to answer the prosecution's question.

Sergeant Hill again refused to answer, and was held in contempt, facing possible court-martial. Hill's action was duplicated by Sergeant Naimoli when he took the stand.

FEAR PROUT'S "FRIENDS"

A significant note was struck by Col. Drowne when, after the two sergeants refused to testify, he called the recalcitrant witnesses before him and said that he realized they had refused to testify for fear of "antagonizing Capt. Prout's friends in the regiment."

Notable in the whole proceedings thus far has been the luke-warm attitude of the prosecution in face of the extremely belligerent tone of the defense counsel.

Objection of the defense to virtually all important phases of alleged evidence against Capt. Prout have been upheld, partially or wholly, by the nine-man court.

The trial judge advocate scored only once throughout the trial, when the prosecution was allowed to introduce into evidence a signed confession by Capt. Prout, which he made at the Foley Square offices of the Federal Bureau of Investigation. The confession, which the defense charged was obtained "under duress," admitted to taking 1,800 rounds of ammunition from the vaults of the regiment and turning it over to fascist leader Bishop. However, the weight of the alleged confession will obviously be questioned by the nine-man court, as was seen in a statement made by Col. Drowne who said it would "be considered for what it is worth."

LEFT GLASSES HOME

Another witness called by the prosecution, Major John J. Rhatigan, supply officer of Capt. Prout's regiment, proved of little help to the trial judge advocate. When asked to explain the regiment's supply records in an effort to show that the 1,800 rounds of ammunition was missing, Major Rhatigan said he was sorry, but he "had left his glasses home." This explanation brought a smile from the nine members of the court, and the witness was excused.

A second witness called by the prosecution, Lieut. Herman Lutz, who had been in charge of the regiment's ammunition vault at the time the ammunition disappeared, proved anything but an aid to the prosecution. Throughout his testimony, Lieut. Lutz found that his memory was vague, or that he did not have pertinent records on hand at the moment to answer the trial judge advocate's questions.

Capt. Prout was tried in Brooklyn Federal Court last June along with other National Guard members and a group of Christian Front fascists, on charges of conspiracy to overthrow the government and theft of government property. He was acquitted on the first charge. The government has not yet decided on a retrial on the second charge.

The nine-man National Guard court will convene again Monday night, where it is expected a decision will be made on the motion of Capt. Prout's defense counsel to dismiss the charges.